IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 14860 of 2005

Between:

Asadulla Pasha, S/o. Anwarullah Pasah,
G-71, Pasha Court, Greenlands Road, Panjagutta, Hyderaad.

..... PETITIONER

AND

The Municipal Corporationof Hyderabd, rep. by its Commissioner, having its Office at M.C.H. Complex,
Tank Bund, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an appropriate Writ or order or direction preferably a writ in the nature of writ of Mandamus declaring the action of the respondent in acquiring or dispossessing or demolishing the property bearing No.6-3-680 situated at Somajiguda, Hyderabad without giving notice or following due process of law as illegal and pass.

Counsel for the Petitioner: MR.ADNAN MAHMOOD

Counsel for the Respondent No.: SMT.G.JYOTHI KIRAN

The Court at the stage of admission made the following :

ORAL ORDER

Learned counsel for the petitioner as well as the learned Standing Counsel for the respondents represent that the writ petition may be disposed of in the light of the direction issued by a Division Bench of this court in P. LAKSHMANA RAO V. EXECUTIVE OFFICER ([1].)

The petitioner, who is the owner of the property bearing No. 6-3-680, situated at Somajiguda, Hyderabad, filed the present writ petition apprehending highhanded and illegal action on the part of the respondents in trying to demolish their houses under the garb of widening of the road, which is in violation of Art.300-A of the Constitution.

Several writ petitions complaining against the arbitrary actions of the various Corporations, Municipalities and Panchayats in proceeding with the widening of the roads without due process of law were came up for consideration before this court and ultimately a Division Bench of this court disposed of the WP No.21198/97 dt. 3-2-1998 with the following directions:

1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

2. If the authorities concerned want to take action for eviction/dispossession of the occupants for demolition, they shall issue 60 days prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections, if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorised occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

4. If the demolition is in respect of local bodies/Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6. If there is any claim for grant/assignment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such

claim is decided, there shall be status quo obtaining as on today regarding the structures.

In view of the same, whenever the respondents are proceeding with the widening of the roads, they are bound to proceed with the same by following due process of law as contemplated under Municipalities Act as well as Land Acquisition Act, 1894 or by way of private negotiations.

Following the guidelines issued by a Division of this court cited 1 supra, this writ petition is disposed of with a direction to the respondent not to demolish the petitioner's property bearing No. 6-3-680, situated at Somajiguda, Hyderabad, without either following due process of law or private negotiations. However, this order will not preclude the respondent-Corporation to negotiate with the petitioner and if the petitioner agrees for such road widening and give consent to give the property in question, it is open for the respondent-Corporation to acquire the same in accordance with law. No costs.

8.7.2005

CVM

To

1. The Municipal Corporationof Hyderabd, rep. by its Commissioner, having its Office at M.C.H. Complex, Tank Bund, Hyderabad.
2. Two CD copies.